

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENDALL R. CARTER,

Defendant.

)  
)  
) Case No.  
) 3:15-cr-00162-1  
)  
) CHIEF JUDGE CRENSHAW  
)  
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BEFORE THE HONORABLE  
CHIEF DISTRICT JUDGE WAVERLY D. CRENSHAW, JR.

TRANSCRIPT OF PROCEEDINGS

December 7, 2018  
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APPEARANCES:

For the Plaintiff: Ms. S. Carran Daughtrey  
110 Ninth Avenue, S., Suite A961  
Nashville, Tennessee 37203

For the Defendant: Mr. Peter J. Strianse  
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PREPARED BY:

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1           The above-styled cause came on to be heard on  
2 December 7, 2018, before the Honorable Waverly D. Crenshaw,  
3 Jr., Chief District Judge, when the following proceedings  
4 were had, to-wit:

5           THE COURT: All right. Be seated. We're here on  
6 Case 15-162, United States of America versus Kendall Carter,  
7 and Mr. Carter's in the courtroom.

8           If counsel can introduce themselves.

9           MS. DAUGHTREY: Yes, Your Honor. Carrie Daughtrey  
10 for the United States.

11          MR. STRIANSE: Good morning, Your Honor. Peter  
12 Strianse of the Nashville Bar here on behalf of Kendall  
13 Carter, Jr.

14          THE COURT: All right. Mr. Carter, we're here  
15 today for sentencing. And in preparation for the sentencing  
16 I've reviewed the plea petition, plea agreement. Have you --  
17 as well as the presentence report. Have you received a copy  
18 of the presentence report?

19          THE DEFENDANT: Yes, sir.

20          THE COURT: And did you get to read every page?

21          THE DEFENDANT: Yes, sir.

22          THE COURT: And every word on every page?

23          THE DEFENDANT: Yes, sir.

24          THE COURT: All right. You all can be seated.

25          We're here today because on December the 4th, 2017

1 Mr. Carter and his attorney appeared and entered a plea of  
2 guilty to Counts Four, Six, Ten, Fourteen, and Fifteen of the  
3 superseding Information dated November 18, 2015, charging him  
4 with production and attempted production of child  
5 pornography, extortion by interstate communication,  
6 production and attempted production of child pornography in  
7 Count Ten, as well as extortion and possession of child  
8 pornography in Count Fifteen.

9 At the time I accepted his plea agreement -- and  
10 Mr. Carter and the Government presented me with a -- I  
11 accepted his plea, and Mr. Carter and the Government  
12 presented me with a plea agreement under Rule 11(c)(1)(C) for  
13 a recommended sentence of 30 years, followed by lifetime  
14 supervision. I took that under advisement until the Court  
15 received the presentence report.

16 I understand the Government has no objections to  
17 the presentence report?

18 MS. DAUGHTREY: No, Your Honor, we do not.

19 THE COURT: Or Mr. Carter?

20 MR. STRIANSE: That's correct, Your Honor.

21 THE COURT: So I will accept the information and  
22 facts in the presentence report as true and rely upon them  
23 for sentencing today.

24 Mr. Carter, the statutory penalty for Count Four  
25 is 15 to 30 years of imprisonment. The period for supervised

1 release is five years to life. Probation is not authorized.  
2 You're also subject to a fine up to \$250,000. And there's a  
3 mandatory \$100 special assessment on each count.

4 Under Count Six, the maximum penalty is up to two  
5 years of imprisonment, supervised release up to one year.  
6 Probation is not authorized. And there's a fine possibility  
7 up to \$250,000.

8 In Count Ten, the maximum sentence is 15 years to  
9 30 years of imprisonment. Supervised release of five years  
10 to life. Probation is not authorized, and a maximum fine of  
11 \$250,000.

12 Count Fourteen, the maximum sentence is up to two  
13 years of imprisonment, one year of supervised release.  
14 Probation is not authorized. And a fine up to \$250,000.

15 And finally, on Count Fifteen, the maximum  
16 sentence is up to 20 years imprisonment, supervised release  
17 is five years to life. Probation is not authorized. And  
18 there's a \$250,000 maximum fine.

19 Do you understand that I can sentence you up to  
20 the statutory maximums?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I need you to verbalize.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Here the guidelines  
25 calculation is -- the final offense level is 45, but that's

1 adjusted to 43 under the guidelines. Mr. Carter has no  
2 criminal history points. So he's set at Category I.

3 According to the guidelines a total offense of 43  
4 and a Criminal History of I results in a sentencing range of  
5 imprisonment for life. However, since the statutory maximum  
6 is on all counts, the guideline range becomes the statutory  
7 maximum, which is 1,008 months of imprisonment. Probation is  
8 not authorized under the guideline. The guideline range for  
9 supervised release is five years to life. And the guideline  
10 range for a fine is 25,000 to \$250,000. And again a  
11 mandatory \$100 per count special assessment.

12 Does the Government have any objection to the  
13 guideline range?

14 MS. DAUGHTREY: No, Your Honor.

15 THE COURT: Or the Defendant?

16 MR. STRIANSE: No, Your Honor.

17 THE COURT: All right.

18 So at this point, Mr. Carter -- I've read the  
19 presentence report. And I want to give you a chance, and  
20 your lawyer, to talk on my -- on the first question, if I  
21 accept or reject the plea agreement and the recommended  
22 sentence from you and the Government. And then go -- we'll  
23 go from there if necessary. So I'll turn it over -- does he  
24 want to allocute, Mr. Strianse?

25 MR. STRIANSE: Your Honor, given the posture of

1 the case, you know this is also pursuant to Federal Rule of  
2 Criminal Procedure 11(a)(2), so it contemplates an appeal to  
3 the United States Court of Appeals for the Sixth Circuit on  
4 our search issue. So at this point in time he will not be  
5 allocuting.

6 THE COURT: All right.

7 Anything further you want to say on whether I  
8 accept the plea agreement?

9 MR. STRIANSE: Your Honor, the Court may remember  
10 on April 17th, I filed a position paper which outlined the  
11 3553(a) factors. I would rely on that unless the Court  
12 wanted to hear more from me.

13 THE COURT: No. And I've read your sentencing  
14 memorandum, as well as that from the Government.

15 MR. STRIANSE: Thank you.

16 THE COURT: All right. Anything the Government  
17 wants to add on whether I should accept the plea agreement?

18 MS. DAUGHTREY: Your Honor, the United States  
19 would -- would ask that you honor the C plea agreement.

20 THE COURT: All right. Mr. Carter, I'm going to  
21 accept the C agreement and impose the 30-year agreed  
22 sentence, along with lifetime supervised release. You are a  
23 first offender. It was nondirect -- indirect sexual contact.  
24 And you've agreed to forfeiture.

25 Do we still have an outstanding issue on

1 restitution, or not?

2 MR. STRIANSE: Your Honor, there is still an  
3 outstanding issue on restitution. It's been briefed by both  
4 sides. And my only thoughts on restitution were that the  
5 Government is seeking restitution for the two victims for  
6 psychological counseling and treatment. I don't believe  
7 either victim has received any actual treatment at this point  
8 in time. And it seemed to me that the request for  
9 restitution appeared to be speculative. I don't know how the  
10 Court would be able to determine the reasonableness of the  
11 request. So that was the basis of my objection.

12 THE COURT: Have you seen the calculations for the  
13 \$16,100 request for restitution?

14 MR. STRIANSE: I've seen the letter where it --  
15 from the Sexual Assault Center that came up with the 16,000,  
16 and attached to that is a breakdown. But again, these are  
17 services that have yet to be rendered.

18 THE COURT: All right. Does the Government want  
19 to respond?

20 MS. DAUGHTREY: Yes, Your Honor. There are two  
21 victims in this case. And there is one victim, the one in  
22 North Dakota who has suffered tremendously as a result of  
23 this. She has been in psychiatric treatment and really  
24 struggling. She's had a lot of counseling. Her family is --  
25 one of the reasons we came to this agreement of 30 years is

1 because her family feels like bringing her down from North  
2 Dakota to appear in this Court, even for sentencing, would be  
3 so traumatic for this victim. We had someone from our office  
4 go up and meet with the family at some point in the fall of  
5 last year. And -- and she really has suffered. So I think  
6 that the potential for -- you know, if Your Honor were to do  
7 anything, I think maybe the other -- the second victim has  
8 not had as serious of a -- of consequences psychologically as  
9 the first -- as the first victim.

10           If you were to do anything with that, I would  
11 almost even recommend that four years worth of counseling go  
12 to the North Dakota victim because she's had so much  
13 difficulty. I believe -- and our victim assistant is here  
14 today, who has been talking to the family, can tell you that  
15 she's even be in inpatient treatment as a result of what has  
16 happened to her. So I think restitution in this case is  
17 extremely important. We have tried to get specific numbers  
18 from them, but they are just so overwhelmed with the problems  
19 that their child is having that they've not gotten that  
20 information back to us.

21           So that's why we -- we went to the local sexual  
22 assault center here. The \$16,000 for each victim is -- what  
23 it is is counseling for one week for two years. Which is  
24 probably underestimating it for the North Dakota victim,  
25 possibly overestimating for the Germany victim.



1           THE COURT: And I was looking for the letter. But  
2 when I read it, I couldn't figure out how they reached that  
3 number.

4           MS. DAUGHTREY: My understanding is that they take  
5 the cost of a single --

6           THE COURT: Hypothetical?

7           MS. DAUGHTREY: Of a -- right. If somebody were  
8 to come into their program and get counseling for one week  
9 times -- I guess 104 weeks is what they -- what they do.

10          THE COURT: You know, I read your brief. And --  
11 which was very helpful. But from what I could see from the  
12 cases, I have to have some kind of factual basis, it seems  
13 like what the Courts are looking for. And I wasn't sure your  
14 letter does it. I'm -- I'm -- you know, I understand that  
15 the victims -- and Mr. Carter has admitted to the conduct.  
16 But I am concerned given it's contested, and I assume he's  
17 not, you know, agreeing to the factual basis, while I'm sure  
18 it's needed, I'm not sure if I impose it it's based upon any  
19 facts before the Court.

20          MS. DAUGHTREY: Okay. Your Honor, I believe that  
21 restitution can be imposed up to the 90 days after the  
22 sentencing. And so I would ask if Your Honor is not  
23 comfortable with restitution today, if you would allow us to  
24 supplement. It may end up being more than \$32,000, but I'll  
25 work with Mr. Hernandez and see if we can get some support

1 for that.

2 THE COURT: Any objection to that, Mr. Strianse?

3 MR. STRIANSE: I have no objection on the  
4 procedure, but we will still maintain our objection.

5 THE COURT: Right. And then -- I think that  
6 sounds like a good way to go. I ask for you all to talk, to  
7 the extent that you can reach an agreement.

8 MR. STRIANSE: Yes, sir.

9 THE COURT: All right. As a result of acceptance  
10 of the plea agreement, Mr. Carter, you'll be committed to the  
11 custody of the Attorney General for a total term 360 months  
12 on Count Four; 24 months on Count Six; 360 months on Count  
13 Ten; 24 months on Count Fourteen, and 240 months on Count  
14 Fifteen, all to run concurrently.

15 Now, with regards to special conditions,  
16 Mr. Carter, yesterday I reached out to the Bureau of Prisons.  
17 I think in prior hearings I expressed the option for you -- I  
18 don't think I can make you do it. But if you -- you're very  
19 close to getting your college degree. And I expressed  
20 earlier that if that's something you want to do, I was  
21 hopeful the Bureau of Prisons would make provisions for that.  
22 So what I found out is that every institution -- every  
23 institution has an education program. You're not going to be  
24 precluded. So if you want to participate, you're not  
25 prevented or precluded from doing so.

1           I inquired about -- they said every institution  
2 has a correspondence course, which I remember, but actually  
3 most people do it now online. And that's the -- that's going  
4 to be the concern, about you being online. Those  
5 institutions that have it online I think have some  
6 precautions that you wouldn't be able to access certain  
7 sites, but I'm going to include in the judgment a  
8 recommendation that you be assigned to a facility with an  
9 education program, and if possible the online option.

10           They're going to look at the nature of the  
11 charges, of course, on whether to give you access to online  
12 courses. So I'm going to make a factual finding, based on  
13 everything in the presentence report that I believe  
14 Mr. Carter having advanced so far in school, and was an  
15 excellent student, it would be good for his reentry into  
16 society if he was able to complete the online course.

17           The presentence report notes that you've got  
18 considerable knowledge about computer usage. And my  
19 recommendation to the Bureau of Prisons is that they give you  
20 some access to online courses so you can finish your college  
21 degree at least. And I think that they can take precautions  
22 to make sure you are not able to access, if possible, certain  
23 sites.

24           Anything more you want me to add to the college  
25 degree component?

1           MR. STRIANSE: Not to the college degree, Your  
2 Honor.

3           THE COURT: All right. Further, I'm going to  
4 recommend to the Bureau of Prisons that you, if you like --  
5 and again it's optional -- participate in the Sex Offender  
6 Management Program. And that program's available regardless  
7 of what your security level ends up being. That program  
8 provides intensive behavioral management plans while you're  
9 incarcerated and gives you tools and mechanisms to control  
10 that behavior. I -- I didn't get to look it up, but I'm sure  
11 Mr. Strianse can get access to it. You know there's a  
12 publication on it. It may carry with it some other benefits,  
13 but I don't want to represent what those were because I  
14 didn't thoroughly look at it. So I do want to recommend  
15 that. Then I want to recommend the Sex Offender Treatment  
16 Program. That, too, is an intensive treatment program to  
17 treat and correct certain behavior. Now, that program you  
18 won't be eligible for until the last 18 months of your  
19 custody sentence. And again, based on my information from  
20 the Bureau of Prisons, it's not security level sensitive.

21           Any other programs, Mr. Strianse, you all had in  
22 mind?

23           MR. STRIANSE: Your Honor, the Court may recall --  
24 and you may be getting to it -- and I don't want to jump the  
25 gun -- but when we were here on July 19th, the Court had done

1 its own research about the public safety factor issue.

2 Do you remember that, Your Honor?

3 THE COURT: Well, I do.

4 MR. STRIANSE: And I had filed in advance of the  
5 sentencing that was scheduled for July 16th, 2018, a  
6 supplemental position paper where I had suggested some  
7 language that would go in the judgment if the Court was  
8 inclined. I can hand it up to the Court.

9 THE COURT: What's the Docket Number?

10 MR. STRIANSE: It's Docket Entry 86.

11 THE COURT: Oh. Yeah.

12 MR. STRIANSE: If you take a look at page 2, Your  
13 Honor -- and this was based on advice given to us by -- given  
14 to Mr. and Mrs. Carter, Mr. Carter's parents, by a  
15 criminologist by the name of Joel Sickler with over 30 years  
16 of experience with the Federal Bureau of Prisons. And the  
17 language that he suggested that I included in my supplemental  
18 position paper was, quote, Given the Defendant's age and  
19 vulnerabilities, the Court strongly recommends the sentence  
20 length PSF, for public safety factor, be waived in this case.  
21 The Court further recommends that the Defendant be designated  
22 to an institution housing a Sex Offender Management Program,  
23 and then the acronym for that; specifically, the program at  
24 FCI Seagoville. What I would ask the Court to do is to  
25 delete Elkton or Englewood, and ask for a specific

1 recommendation to FCI Seagoville, which is in Texas, and then  
2 include the additional language: If the Bureau of Prisons  
3 does not waive the PSF, the Court recommends the program at  
4 FCI Marianna, which is in --

5 THE COURT: Okay. I think we're on the same page.  
6 Because the two programs I am going to recommend, they're not  
7 security sensitive. And I talked -- and that's based on my  
8 conversation with the senior counsel for the Bureau of  
9 Prisons yesterday. Because I -- I had read this. And I was  
10 concerned what findings do I need to make --

11 MR. STRIANSE: Right.

12 THE COURT: -- so he can get into those programs.  
13 So the attorney -- and his name was Paul Irby. I'm going to  
14 have him come to Nashville to meet with the panel. Said that  
15 both the Sex Offender Management Program and the Sex Offender  
16 Treatment Plan are not security sensitive.

17 Now, I have one more that is, but that's the  
18 reason -- maybe that's where we're going.

19 MR. STRIANSE: And my concern is more than  
20 inclusion in the Sex Offender Management Program.

21 THE COURT: Uh-huh.

22 MR. STRIANSE: My concern is, as expressed in  
23 Docket Entry 86, is due to the length of the sentence, unless  
24 the Court waives the public safety factor, he would not be  
25 eligible to go to an FCI low facility. And the Court

1 addressed this back in July, where I think the Court shared  
2 the same concern. And you indicated to me -- and I've got a  
3 transcript of that hearing that I could hand up if the Court  
4 wants to refresh its recollection.

5 THE COURT: No, I remember.

6 MR. STRIANSE: You suggested that you might need  
7 to make some additional findings --

8 THE COURT: Yeah.

9 MR. STRIANSE: -- if you were going to suggest a  
10 waiver of the public safety factor. And I would respectfully  
11 suggest to the Court that those findings could come from  
12 Docket Entry 80, which was my original position paper, page  
13 ID 692, that talk about the history and personal  
14 characteristics of Mr. Carter.

15 Obviously the Court wouldn't have to take every  
16 fact that I've included in there, but I think it might help  
17 inform the Court's recommendation if you were willing to  
18 waive the public safety factor.

19 THE COURT: All right. Well, let's keep down that  
20 path. Because that -- that -- that coincides with my next  
21 recommendation to the Bureau of Prisons based on my  
22 conversation.

23 Mr. Carter, there's a possibility -- and again, I  
24 can't make the Bureau of Prisons, but I've talked to their  
25 lawyer, so I'm hopeful this would work. That you could

1 volunteer during your custody sentence -- he could be  
2 designated a teacher. And he would have the opportunity,  
3 given your math skills, in particular to help other inmates  
4 with simple math, algebra, those kind of things, as they're  
5 working toward maybe a GED or whatever. And again, that's an  
6 option to you, but that's where the management variable comes  
7 in. This one is sensitive. This one is safety sensitive.  
8 And he is -- so in order to do that, these findings in your  
9 document are good, but what I was hoping is to say the Court  
10 wants to find that based upon all the information in the  
11 presentence report Mr. Carter does not present a safety  
12 issue. There's nothing in the presentence report that --  
13 what the information in the presentence report is is that he  
14 was a very good student in all respects. This is his first  
15 criminal offense. And the facility that he'll I think be  
16 assigned to, it will be others who are serving time for  
17 similar or same crimes, and, therefore, he would not present  
18 a safety issue as to those other inmates there. Does that  
19 make sense?

20 MR. STRIANSE: Yes, sir, it does.

21 THE COURT: And I think that's where, I'm told, I  
22 could make -- request a management variable to the particular  
23 facility he's assigned to, to classify him as a low safety  
24 risk. While the criminal conduct he's admitted to did -- did  
25 involve some indirect contact, and that, no doubt, caused



1 injury to those victims, I believe once he's assigned to a  
2 facility, and given his background, his strong and diligent  
3 work as a student, the nature and history of his activity  
4 prior to this criminal conduct, there's every indication to  
5 the Court -- and the Court so finds -- that in the facility  
6 that he will be assigned to I don't think Mr. Carter creates  
7 a safety risk to others there.

8 Now, does the Government contest those findings?

9 MS. DAUGHTREY: Your Honor, I just want to make  
10 clear, it is the Government's position that he is a public  
11 safety risk if he's out of prison.

12 THE COURT: And we're not talking about out of  
13 prison.

14 MS. DAUGHTREY: Right. And I just --

15 THE COURT: We're talking about --

16 MS. DAUGHTREY: -- wanted to clarify that.

17 THE COURT: Good.

18 MS. DAUGHTREY: From what I can -- I know at this  
19 point, I don't see him being a public safety risk within the  
20 BOP system.

21 THE COURT: And do you see him to be a risk within  
22 that system, toward others?

23 MS. DAUGHTREY: No, I do not. But I'm also not  
24 qualified to say that. I just --

25 THE COURT: No.

1 MS. DAUGHTREY: For purposes of the record, I just  
2 want to make sure that the Court's not saying he's not a  
3 public safety risk --

4 THE COURT: No, I'm talking --

5 MS. DAUGHTREY: -- outside.

6 THE COURT: No, not at all. I'm talking about  
7 purely for the purposes of the BOP classification of his  
8 security level. I think all the information in the  
9 presentence report suggests he will not be a safety risk  
10 while he is in custody. And the Government does not contest  
11 that?

12 MS. DAUGHTREY: Right. I defer to Your Honor.

13 THE COURT: All right. Now, based on that, I  
14 recommend to the particular facility, whatever that is, that  
15 there be a management variable based upon the factual  
16 findings that are not contested by the Government here.

17 MR. STRIANSE: And, Your Honor, we were asking for  
18 a specific recommendation from the Court to the facility at  
19 FCI Seagoville, Texas. And I've got that language --

20 THE COURT: Right. I'll make that recommendation.  
21 And that's all that will be, is a recommendation.

22 MR. STRIANSE: Yes, sir.

23 THE COURT: I think that there are certain  
24 facilities that Mr. Carter would be assigned to. And you've  
25 got them here. And whether or not he'll get that or not is

1 purely on the basis about the census and availability there.  
2 But I'll make the recommendation.

3 MR. STRIANSE: Thank you.

4 THE COURT: Would you object if I also stated the  
5 most important thing to Mr. Carter would be that he get the  
6 opportunity to complete his college degree, he get the  
7 opportunity to participate in the Sex Offender Management  
8 Program and the Sex Offender Treatment Program, and that he  
9 gets the opportunity to serve as a teacher to others while he  
10 is in custody?

11 MR. STRIANSE: We have no objection to those  
12 recommendations.

13 THE COURT: So just so the record's clear -- and  
14 the Bureau of Prisons will get a copy of this -- the factual  
15 findings that the Court relies on, and as I've already  
16 stated, is based upon all the information I have been  
17 provided by Mr. Carter and his attorney, as well as that in  
18 the presentence report, which is not disputed.

19 So I think -- we'll attach a copy of this  
20 transcript to the judgment.

21 And I think, Mr. Carter, that will accomplish what  
22 we're trying to do here.

23 Any other conditions, Mr. Strianse?

24 MR. STRIANSE: No other conditions, Your Honor.

25 THE COURT: All right. After your custody

1 sentence, you will be on lifetime supervised release. That  
2 will carry with it certain special conditions, such as mental  
3 health program, sex offender assessment, sex offender  
4 registration according to any state laws, not consume any  
5 alcoholic beverages, pre-approve residence and employment by  
6 probation, not associate with children under the age of 18 or  
7 frequent, volunteer or work in places where children  
8 congregate, such as playgrounds, unless approved by  
9 probation. You're not to have any contact, Mr. Carter, with  
10 AA, MK, or MH, or the victims' immediate families, directly  
11 or indirectly, either in person or by telephone, mail,  
12 interactive computer service, third-party or any other means  
13 as probation allows and verifies.

14           You shall not buy, sell, exchange, possess, trade  
15 any visual depictions of minors or adults engaged in sexually  
16 explicit conduct, and not correspond or communicate in person  
17 or by mail, or otherwise, with individuals or companies  
18 offering to buy, sell, trade any visual -- any such visual  
19 depictions of minors or adults engaged in such sexual  
20 conduct. You shall not possess or use any device capable of  
21 creating pictures or videos without prior approval of  
22 probation.

23           You will need to consent to probation conducting  
24 unannounced examinations of your computer systems as  
25 specified in the judgment, as well as periodic inspection of

1 any hardware or software functioning on your computer system.  
2 You'll provide probation with an accurate information about  
3 your entire computer system, internal and external storage  
4 devices, as -- as approved and allowed by probation, and  
5 furnish all financial records. I also impose the standard  
6 conditions, which include be truthful to probation, follow  
7 their instructions, live and work in a place approved by  
8 probation, not commit any other -- any other federal, state  
9 or local crimes, not possess any unlawful controlled  
10 substances, and all the other standard conditions of  
11 probation that will be in the judgment.

12 I will not impose a fine because I determine he's  
13 financially unable to pay a fine. But I do impose the  
14 mandatory special assessment of \$100 per count for a total of  
15 \$500. I'm not going to impose any restitution because the  
16 Court doesn't have sufficient factual basis to do so, but the  
17 notation by the Government that it may within 90 days make  
18 application for -- for a restitution amount.

19 I think we've agreed to -- agreed forfeiture  
20 judgment on the iPhone 5 Model A1428, can -- and the iPad  
21 serial number DKVHHIENDFHY. Both of those items will be  
22 forfeited to the United States by agreement. All right.

23 Okay. Do the parties have any objection to the  
24 sentence that have not been previously been stated? From the  
25 Government?

1 MS. DAUGHTREY: No, Your Honor. I do know that  
2 the Sixth Circuit has asked that there be a basis for the  
3 special conditions of supervised release. And I just wanted  
4 to see if the Defense objects to any of those, if we need  
5 to -- for you to articulate those reasons on the -- on the  
6 record.

7 THE COURT: Did you have any one in mind? Seems  
8 to me that all of the conditions of -- special conditions are  
9 justified by the information in the presentence report. Any  
10 objection to any of those special --

11 MR. STRIANSE: We don't have any objection, Your  
12 Honor.

13 THE COURT: Okay. And the factual basis the Court  
14 relies upon is what's in the presentence report.

15 All right. With that qualification, does the  
16 Government have any objections to the --

17 MS. DAUGHTREY: No, Your Honor.

18 THE COURT: Or the Defendant?

19 MR. STRIANSE: No, Your Honor.

20 THE COURT: So the sentence is hereby ordered  
21 imposed as stated.

22 Does the Government want to dismiss the remaining  
23 counts?

24 MS. DAUGHTREY: Yes, Your Honor, we would like to  
25 do so at this point.

1           THE COURT: So Counts One, Two, Three, Five,  
2 Seven, Eight, Nine, Eleven, Twelve, and Thirteen are  
3 dismissed on the Government's motion.

4           Now, Mr. Carter, you have the right to appeal.  
5 But your appeal rights are severely limited by the plea  
6 agreement. Subject to the plea agreement, if you can't  
7 afford the cost to appeal, you can appeal as a pauper. If  
8 you tell your lawyer you want to appeal, he will do so. If  
9 you tell the Clerk of Court you want to appeal, you can do  
10 so. And the court officer is handing you now a form notice  
11 that you can use however you want, but I strongly urge you to  
12 talk to a lawyer.

13           Do you have any questions about your appeal  
14 rights?

15           THE DEFENDANT: No, sir.

16           THE COURT: Okay. Anything else from the  
17 Government?

18           MS. DAUGHTREY: No, Your Honor.

19           MR. STRIANSE: Your Honor, can I address the Court  
20 just briefly?

21           THE COURT: Sure.

22           MR. STRIANSE: Your Honor, the Court recognizes  
23 that the procedural posture of this case is that this was a  
24 conditional plea pursuant to Rule 11(a)(2) of the Federal  
25 Rules of Criminal Procedure. And that was really one of the

1 motivating factors for me to file the motion to reconsider.  
2 And I'm not arguing the motion to reconsider at all at this  
3 point. I realize that that has been denied. And I was  
4 motivated to do that because of the decision in *Carpenter v.*  
5 *U.S.* this summer. And after *Carpenter*, there were certain  
6 documents that really were not relevant before *Carpenter* that  
7 I think became relevant.

8           The Court may recall I included in a footnote in  
9 my motion to reconsider certain documents that we don't have.  
10 I was very careful to put in that footnote that I'm not -- I  
11 have no complaints at all with the discovery production by  
12 the Government throughout the pendency of this case. I don't  
13 expect the Government to go find anything for me. The  
14 purpose of that footnote was just to basically inquire if the  
15 Government happens to have those items that are enumerated in  
16 that footnote 1, then -- again, I'm concerned about the  
17 District Court record on appeal when we go to the Sixth  
18 Circuit. If they had it, I would do a very simple Notice of  
19 Filing and include that in the District Court record. I just  
20 wanted to bring that to the Court's attention and make sure  
21 the Government understood what -- what my objective was here.  
22 Not in any way complaining about what they've produced. They  
23 may not have these items, but I would hope that they would --  
24 it's a large volume of discovery. I would hope they would  
25 take another look at it and see if any of those documents do



1 exist in their possession, and, if so, produce them for me so  
2 I could do this Notice of Filing.

3 THE COURT: Ms. Daughtrey?

4 MS. DAUGHTREY: Your Honor, I presume everything  
5 that we have was turned over in discovery. I can verify  
6 that.

7 THE COURT: Okay.

8 MS. DAUGHTREY: But -- I -- I -- typically we  
9 don't turn over those kind of administrative papers, as I  
10 said in my response, but in this case those were turned over.  
11 So I just assumed that all of them that we had were turned  
12 over. But I will go back and look. I'm not the person who  
13 did the discovery, but I'll review it.

14 THE COURT: All right.

15 MR. STRIANSE: Thank you.

16 THE COURT: Okay. Mr. Strianse, is Mr. Carter's  
17 parents in the audience?

18 MR. STRIANSE: They are right here.

19 THE COURT: Can they have a few minutes to talk?

20 MARSHAL: Yes, sir.

21 THE COURT: Or has that already occurred?

22 MARSHAL: It hasn't occurred.

23 THE COURT: Then Mr. Carter, if you would like,  
24 the marshals and I are going to allow your parents to chat.

25 I think the marshals are going to want you to come

1 to the next row. One seat up. And then they'll make him  
2 available. Yeah. If you just move to that one. Yeah.  
3 That's it. You've got -- you may want to come down a little  
4 bit.

5 (Respite.)

6 MR. STRIANSE: Thank you for that, Your Honor.

7 THE COURT: Okay. Thank you.

8 (Court adjourned.)

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1 REPORTER'S CERTIFICATE

2  
3 I, Lise S. Matthews, Official Court Reporter for  
4 the United States District Court for the Middle District of  
5 Tennessee, with offices at Nashville, do hereby certify:

6 That I reported on the Stenograph machine the  
7 proceedings held in open court on December 7, 2018, in the  
8 matter of UNITED STATES OF AMERICA v. KENDALL R. CARTER, Case  
9 No. 3:15-cr-00162-1; that said proceedings in connection with  
10 the hearing were reduced to typewritten form by me; and that  
11 the foregoing transcript (pages 1 through 26) is a true and  
12 accurate record of said proceedings.

13 This the 22nd day of January, 2019.

14  
15 /s/ Lise S. Matthews  
16 LISE S. MATTHEWS, RMR, CRR, CRC  
17 Official Court Reporter  
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